In the Supreme Court of the United States

OCTOBER TERM, 1966

No. 1111

ALFRED KORN, JR., PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

Petitioner, a veterans' preference eligible, was employed by the Internal Revenue Service as a criminal investigator. On November 27, 1959, he was removed from his position on charges of inefficiency and improper conduct. Petitioner appealed his removal through the appellate procedures provided by his agency,[1] and his appeal was denied by the Director of the Personnel Division of the Service on December 29,

[1] Petitioner, as a veterans' preference eligible, could have appealed his removal through the Civil Service Commission, but he elected to appeal through his agency.

1959, and by the Director of Personnel of the Department of the Treasury on February 16, 1960. The latter decision was the final administrative decision on petitioner's removal.

On November 24, 1965, five years and nine months after petitioner had exhausted his administrative remedies, he instituted this action in the Court of Claims seeking to recover back pay for his allegedly wrongful removal. The Court of Claims granted the government's motion for summary judgment. It held that petitioner's claim was barred by laches, relying on its decision in *Gersten* v. *United States*, 364 F. 2d 850.

The application of the doctrine of laches to this type of litigation is well settled. Indeed, laches has been held to bar recovery of back pay from the United States in cases involving substantially shorter periods of delay. See *e.g.*, *United States ex rel. Arant* v. *Lane*, 249 U.S. 367 (22 months); *Norris* v. *United States*, 257 U.S. 77 (11 months); *Nicholas* v. *United States*, 257 U.S. 71 (three years); *Jones* v. *Summerfield*, 265 F. 2d 124 (C.A.D.C.) certiorari denied, 361 U.S. 841 (33 months). In this connection, it should be noted that neither in this Court nor in the court below did petitioner assign any reason for failing to bring suit more expeditiously.

We respectfully submit that the petition should be denied.

THURGOOD MARSHALL,
Solicitor General.

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